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Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 5th January, 1996/Pausa 15, 1917 (Saka)

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ORDINANCE, 1996

No. 4 OF 1996

Promulgated by the President in the Forty-sixth Year of the Republic of India.

An Ordinance to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996.

WHEREAS the Building and Other Construction Workres' Welfare Cess Ordinance, 1995, to provide for the aforesaid matters was promulgated by the President on the 3rd November, 1995;

AND WHEREAS the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in the House of the People to replace the said Ordinance, but has not yet been passed;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the said Bill with certain modifications;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title, extent and commencement.

1. (1) This Ordinance may be called the Building and other Construction Workers' Welfare Cess Ordinance, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(a) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996;

(b) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board;

(c) "prescribed" means prescribed by rules made under this Ordinance;

(d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 shall have the meanings respectively assigned to them in that Ordinance.

Levy and collection of cess.

3. (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996, at such rate not exceeding one per cent, of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996, and to the State Governments such sum of money, not exceeding one per cent, of the amount collected, towards the cost of collection of such cess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Ordinance including payment of such cess in advance may, subject final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

Furnishing of returns.

4. (1) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

Assessment of cess.

5. (1) The officer or the authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Notwithstanding anything contained in this Ordinance, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Ordinance for such building or other construction work as may be specified in such notification.

Power to exempt.

7. Any officer or authority, of the State Government specially empowered in this behalf by that Government may—

Power of entry.

(a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Ordinance including verification of the correctness of any particulars furnished by any employer under section 4;

(b) do within such place anything necessary for the proper discharge of his or its duties under this Ordinance; and

(c) exercise such other powers as may be prescribed.

8. If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent. for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

Interest payable on delay in payment of cess.

9. If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Penalty for non-payment of cess within the specified time.

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

10. Any amount due under this Ordinance (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

Recovery of amount due under the Ordinance.

11. (1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

Appeals.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

12. (1) Whoever, being under an obligation to furnish a return under this Ordinance, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

Penalty.

(2) Whoever, being liable to pay cess under this Ordinance, willfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or, with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

Offences by companies.

13. (1) Where an offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Ordinance has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Power to make rules.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;

(b) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(c) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(d) the powers which may be exercised by the officer or authority under section 7;

(e) the authority which may impose penalty under section 9;

(f) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Ord.
15 of 1995.

15. (1) The Building and other Construction Workers' Welfare Cess Ordinance, 1995, is hereby repealed.

Repeal and saving

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Ordinance.

SHANKER DAYAL SHARMA,
President.

K.L. MOHANPURIA,
Secy. to the Govt. of India.

